

25-7603

OGC Has Reviewed

12 January 1953

MEMORANDUM FOR: Office of the General Counsel

ATTENTION: [REDACTED] 25X1A9a

SUBJECT: Foreign Tours of Duty

REFERENCE: Your memorandum of 30 December 1953, Subject:
Dispatch [REDACTED] 25X1A6c

25X1A6a 1. I am choosing to comment on your memorandum because the reference dispatch was written at my request as a result of the serious confusion which I found overseas during a TDY tour in October and November of last year. I spent some time in the [REDACTED] and found that even there where a large staff of competent administrative people was responsible for administration and interpretation of home leave and related regulations in the field, there was a notable lack of understanding of statutory and Agency standards. Unfortunately, it was fairly obvious that much of the confusion arose from various interpretations of the General Counsel which had been from time to time transmitted to the field. It was with the hope that confusion might be reduced, even eliminated, that the dispatch was written, and in order to insure that perhaps once and for all a clear statement could be made that we requested your office to coordinate. Further, 25X1A6a recognizing that there is serious confusion in the [REDACTED] on these issues and that the Agency mechanism for establishing a clear-cut opinion by the General Counsel and reducing this to a regulatory issuance actually distributed in the field is laborious and time-consuming, and in view of the fact that I am personally committed to get a clear statement to the field as soon as possible, it is urgently requested that if the dispatch is not acceptable to the Office of the General Counsel, you provide us with a draft which is acceptable and at the same time is clear and unambiguous in its discussion.

2. To begin with, it appears to me that your Office has in some of its interpretations failed as have many other components of the Agency to recognize, in writing at least, that there are two separate and distinct tours with which we are concerned: The first having to do with the right of an individual to return transportation at government expense upon the completion of two calendar years from the date of arrival in the field, and the second having to do with the home leave privilege which at least heretofore has been extended upon the completion of two years' duty in the field plus such time as may have been spent on leave in the States for personal convenience. Being neither by profession nor position competent to render legal opinion, it has nevertheless

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been my understanding as an administrator in the Agency that these two tours were distinct and not necessarily satisfied by the same service. Service sufficient to satisfy the home leave requirements would automatically be sufficient to satisfy those for return transportation but not the reverse. Any statement in an opinion or regulatory issuance should identify the context when the phrase "two-year tour" or "overseas tour" is used.

3. With specific reference to your memorandum, I must first take exception to the unmodified statement in paragraph 2 that "under present Agency policies those employees who perform two years continuous service abroad will receive home leave regardless of whether they return TDY from their overseas post or PCS headquarters." First, of course, is the requirement that the individual have accumulated the necessary leave credit, and second, that the phrase "continuous service abroad" is one which has been confused in its definition, and third, the point covered later in your memorandum that all will receive the leave which begs the question of right versus privilege. In fact, your statement that you believe the Agency has the authority to transfer PCS thereby precluding home leave supports the present regulatory statement requiring approval of home leave by the Personnel Director. This, it seems to me, establishes the privilege principle. Of course, we recognize that the argument has been that though transferred PCS to headquarters, the individual who had served overseas could be presumed to be eligible for another overseas tour at some undetermined time and, therefore, could be considered to be between tours. May we point out that [REDACTED] uses the words "may be granted." If home leave is a right, it is presumptuous of this Agency to use the words "may be granted." As I understand current Agency coordination procedures, your office concurred in this wording prior to its issuance.

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4. Your recital of the conflicting cables in paragraph 4 illustrates clearly why I am so urgently recommending the earliest possible communication with [REDACTED]. You take exception in your paragraph 5 to the structure of the final sentence of the dispatch. I take fundamental exception with your position. The employee is the acting element inasmuch as it is a statutory right to return transportation which the employee may exercise without regard to Agency action. Until such time as Congress may choose to alter its position, I believe the government has committed itself to the position of the employee being the acting element. Realistically, of course, an employee who desired to continue his employment with the Agency and for that reason not antagonize those in authority would, if at all

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possible, adjust his personal desires to the Agency's needs. The fact remains, however, that having satisfied the minimum requirements for overseas service, an employee could return without orders and successfully claim reimbursement of travel costs for this is the essential of the overseas contract which we entered into with our employees.

5. We agree that prognostication later proved to be false would serve no purpose. We doubt that it could confuse the situation any more than at present but recommend, again most urgently, that immediate action be taken.

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Chief, SR/Administrative Staff